

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PETER M.,

Claimant,

v.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. N 2006070190

**DECISION**

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Campbell, California, on November 2, 2006.

Claimant Peter M. was represented by attorney Victoria BurtonBurke. Claimant was not present.

Jacques F. Maitre, M.S.W., Executive Director's Designee for Fair Hearings, represented the service agency, San Andreas Regional Center (SARC).

The matter was submitted on November 2, 2006.

**ISSUE**

Is claimant Peter M. eligible for services under the Lanterman Act because of a condition that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation?

**FACTUAL FINDINGS**

1. In June 2006, SARC determined that claimant Peter M. was not eligible for regional center services. Claimant appealed and this hearing followed.

2. Claimant Peter M. was born on May 1, 1990, and is approximately sixteen and one-half years old. He has been placed in various foster homes and juvenile facilities since

the late 1990s. On February 8, 1999, the Superior Court, County of Santa Clara, found that claimant and two of his siblings required out-of-home placement. The court stated that claimant's parents each had a "long standing substance abuse problem," that his parents had made "insubstantial efforts" to address their substance abuse problem, and that claimant and his siblings "have experienced a lifetime of inadequate parenting from an absent father and a substance abusing mother." Claimant is currently incarcerated in the Santa Clara Juvenile Hall.

3. On November 21, 2003, clinical psychologist Joseph M. Pazdernik, Ph.D., conducted a forensic psychological evaluation of claimant for the Superior Court, County of Santa Clara. Claimant was 13 years old at the time. Dr. Pazdernik interviewed claimant and administered a battery of psychological tests that included the Wechsler Intelligence Scale for Children-Revised, Projective Drawings, Rorschach Test, and Carlson Personality Survey. Dr. Pazdernik reported:

[Claimant] has been a Dependent Child of the Court since 1998. On September 25, 2003, he allegedly grabbed the purse of his foster caretaker and ran away with a loot of \$350 in coins and four rings. He was subsequently apprehended and re-placed at another small group home. He ran way from there and was later placed at the Children's Shelter, from which he ran away in a matter of hours. He was re-arrested and placed in Juvenile Hall on November 7, after his mother informed the police that her son was at her home. He has no history of legal violations prior to the present referral.

Pazdernik further reported:

**Family history:** Peter is one of a large number of children from a dysfunctional family background. His [sic] had an unstable off and on relationship [sic] parents. Both used drugs and the father had also been absent due to incarceration. Peter and his siblings were apparently much cared for by their grandmother. When Peter was 8 years old, he (apparently with other children) was removed from home apparently due to neglect. He was in four foster placements since then. His longest one was that in Los Banos, from where he ran away, before he was placed in San Jose earlier this year. Since then, he ran from two other placements (see above).

Pazdernik concluded that claimant did not demonstrate "any definite form of acute psychiatric pathology," that his intellectual achievement as measured by standardized IQ testing fell into the "lower average range for his age group," and that claimant did not have a need for formal psychiatric treatment or psychiatric hospitalization.

4. According to documents in the record, claimant was placed with the California Youth Authority in Modoc County when, on February 6, 2005, he and two other youths escaped using a stolen car. The three were involved in a car accident in Oregon that killed two of the minors and caused claimant serious head trauma and a month-long coma.

5. On January 6, 2006, claimant was evaluated by psychologist Henry P. Hoey, Ph.D., pursuant to Evidence Code section 1017. Dr. Hoey interviewed claimant and administered the Kaufman Brief Intelligence Test (K-BIT), Weschsler Intelligence Scale for Children-III (WISC-III), Trail Making Part A and B, and the Bender-Gestalt II. Claimant's mother also completed questionnaires.

Claimant's performance on the K-BIT vocabulary subtest yielded a standard score of 58 (100 is average), which was at the 0.3 percentile for his age group. His performance on the K-BIT matrices subtest yielded a standard score of 40, which was at less than the 0.1 percentile for his age group. The combination of these performances yielded a K-BIT IQ of 44, which was also less than the 0.1 percentile for his age group.

Dr. Hoey reported claimant's WISC-III performance as:

<u>WISC-III</u> <u>IQ/Index (I)</u>	<u>IQ/I</u> <u>Scores</u>	<u>Percentiles</u>
Verbal IQ	46	<.1
Performance IQ	46	<.1
Full Scale IQ	42	<.1
Verbal Comprehension I	52	0.1
Perceptual Organization	50	<.1
Freedom from Distractibility I	50	<.1
Processing Speed I	54	0.1

The Trail Making test is a measure of visual-spatial concentration, speed of mental processing and the ability to shift mental sets. Dr. Hoey reported that claimant's performance in the Trail A was around the first percentile or less and that claimant's performance in the Trail B was extremely deficient and at about the first percentile or less.

The Bender-Gestalt II requires the copying of twelve designs of increasing complexity. Dr. Hoey reported claimant's performance on the Bender-Gestalt II as a standard score of 61 (100 is average), which Dr. Hoey characterized as at the 0.4 percentile and "an extremely low performance." Dr. Hoey further reported that claimant's immediate recall and drawing of the designs claimant had drawn yielded a confusing and overlapping group of designs. Claimant's performance of this part of the test yielded a standard score of 66, at the 1.17 percentile for his age group.

Dr. Hoey concluded that claimant:

. . . is suffering from pervasive and severe cognitive deficiencies. This pattern of deficiency is indicative of general and debilitating brain damage, which is consistent with significant damage to the neurons of the central nervous system. As a result his general intellectual abilities are seriously impacted and his executive skills such as self-monitoring are significantly flawed.

Dr. Hoey further reported:

[Claimant] is in need of a comprehensive medical, psychological and educational treatment program. Although he has made gains in his physical rehabilitation while he was in the hospital and as an outpatient he has not received the mental rehabilitation that he clearly needs. Moreover, due to his low IQ he would certainly qualify for services at the San Andreas Regional Center.

Dr. Hoey stated:

[Claimant] needs to start a long-term program of treatment that focuses on the rehabilitation of his cognitive skills. He probably has some potential for a partial recovery. The degree of his mental recovery is uncertain and can only be determined by lengthy and comprehensive rehabilitation procedures.

6. At the request of the Superior Court, County of Santa Clara, psychologist Jeffrey Schreiber Kline, Ph.D., attempted to conduct an adjudicative competency evaluation of claimant on May 3, 2006. Dr. Kline met with claimant for about 40 minutes at Juvenile Hall before claimant became angry and refused to continue. Dr. Kline did review Dr. Hoey's evaluation, however. Based on his review of Dr. Hoey's evaluation and on his 40 minutes with claimant, Dr. Kline provisionally concluded that claimant most likely did not meet the legal criteria for adjudicative competency.

7. SARC psychologist Jary Larsen, Ph.D., conducted an assessment of claimant on April 6, 2006. The assessment took place at the Santa Clara County Juvenile Hall, where claimant was incarcerated. Claimant had been referred to SARC for a determination of eligibility for services.

Dr. Larsen reviewed the evaluations done by Drs. Pazdernik and Hoey. Larsen did not have Dr. Kline's report at the time he assessed claimant.

Claimant reported that he had been incarcerated at Juvenile Hall since January 2, 2006, for making a threat to someone at school. Claimant said he could not remember to whom he had made the threat, saying that he had “short-term memory loss.” He was receiving educational coursework at Juvenile Hall in vocabulary, English, and math.

Claimant reported he was on “A Level,” meaning that he was entrusted to work on “Detail” – sweeping the unit, cleaning the showers, and other types of cleaning work.

Dr. Larsen attempted to administer the Street Survival Skills Questionnaire (SSSQ) in order to assess claimant’s adaptive functioning. Claimant, however, quickly became belligerent and uncooperative. He accused Larsen of “dissing” (disrespecting) him and left the interview room without completing the questionnaire.

In lieu of the SSSQ, Larsen interviewed claimant’s Juvenile Hall counselor, Mr. Wilson, and claimant’s probation officer, Jesus Sanchez. Larsen interviewed Wilson and Sanchez separately, by telephone. Wilson reported that claimant had been allowed to participate in “Detail.” Wilson noted that claimant had a very good understanding of germ control and that he followed through with his work appropriately. Wilson added that claimant read very well and that he understood what he read. Wilson noted that claimant had difficulty with math, that he sometimes acted out, that he associated and was affiliated with the “Northerns” gang. Wilson reported that claimant did not function at a substantially lower level than the typical juvenile on the unit with the exception of some behavioral issues.

Probation officer Sanchez noted that claimant was very attuned to his hygiene and was capable of carrying through everything without prompts. Sanchez reported that claimant was very responsible with Detail duty, that he was aware of safety issues and usually acted appropriately on the unit.

Dr. Larsen interviewed claimant’s mother, Susie B., by telephone on June 8, 2006. Larsen completed the Vineland Adaptive Behavior Scales – Second Edition. Based on claimant’s mother’s responses; claimant was rated SS=71 (borderline range) for Communication, SS=83 (low average range) for Daily Living Skills, and SS=76 (borderline range) for Socialization. Regarding these results, Larsen stated:

Although [claimant’s] Communication subtest rating was in the borderline range, it was notable that his Receptive Communication skills were compromised more by short-term memory issues than by inability. For example, he has difficulties with following through on multi-step commands due to STM loss. In addition, [claimant’s] inability to focus for longer periods of time further compromised his receptive abilities. It was also notable that [claimant’s] Expressive Communication ratings were also affected since [claimant] does not know his address or phone number since he [sic] mother moved after the accident. She noted, however, that she had

given him the wrong number right after getting a new number (she had reversed the last two digits) and he memorized the incorrect number.

Dr. Larsen noted that claimant had performed in the significantly impaired range on the WISC-III when he was assessed by Dr. Hoey in January 2006. Dr. Larsen, however, believed that claimant's performance with Dr. Hoey did not represent an accurate representation of his actual intellectual abilities. Dr. Larsen believed instead that, "At best, [claimant's] performance with Dr. Hoey can only be considered his minimum level of intellectual functioning" because claimant had already demonstrated that he can be uncooperative during assessments, because claimant "complained bitterly" about Dr. Hoey's questions, and because claimant's low IQ scores were not consistent with his presentation or with the reports of his adaptive functioning both when living with his mother and in Juvenile Hall.

Dr. Larsen observed:

Adaptive functioning is the most important factor in determining Regional Center eligibility for [claimant]. In lieu of using psychometric testing with the juvenile, interviews were conducted with those who know him, including the use of a standardized adaptive functioning interview with his mother. At the time I interviewed staff, [claimant] was on Detail duty, which is a position of trust to which individuals are nominated by staff. In all three cases, the individuals painted a very consistent picture of [claimant's] current level of functioning. Although [claimant's] level of adaptive functioning is compromised post-trauma, adaptive functioning is not significantly impaired based on the reports of Juvenile Hall staff and his P.O. Officer, as well as his mother. In addition, some of the compromise in adaptive functioning is due to short-term memory loss and to impulse control and self-monitoring deficits – not necessarily cognitive inability.

Dr. Larsen acknowledged that claimant exhibited executive dysfunction, but noted that executive functioning deficits can accompany many disorders and may manifest in different ways, most of which are not eligible conditions under the Lanterman Act (e.g., psychiatric illness, ADHD, certain types of brain injury). Dr. Larsen concluded that the types of executive dysfunction claimant exhibited suggests he needs services similar to someone with a brain injury and that claimant required behavioral interventions, not habilitative services required by those with mental retardation. Dr. Larsen concluded that claimant is neither mentally retarded nor requires services like someone who is mentally retarded. Dr. Larsen thus found claimant ineligible for SARC services.

## LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities. As defined in the act, a developmental disability is a disability that originates before age 18, that continues or is expected to continue indefinitely, that constitutes a substantial disability for the individual, and that is attributable to mental retardation, cerebral palsy, epilepsy, autism or what is commonly known as the “fifth category” – “disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals.” (Welf. & Inst. Code, § 4512, subd. (a).) The issue in this case is whether claimant is eligible for regional center services under the fifth category.

2. Only one witness, Dr. Jary Larsen, testified at hearing. None of the other psychologists (Drs. Pazdernik, Hoey, and Kline) or individuals involved or discussed in claimant’s various assessments (including claimant’s mother, his Juvenile Hall counselor, and his probation officer) appeared as witnesses; thus, there was no opportunity at hearing for the parties to probe their observations and conclusions.

Dr. Larsen testified persuasively regarding his evaluation of claimant. He concluded that claimant is neither mentally retarded nor requires services like someone who is mentally retarded. Dr. Larsen thus determined that claimant did not qualify for SARC services. Dr. Larsen credibly disputed the conclusions reached by Dr. Hoey, noting that claimant’s performance with Dr. Hoey did not represent an accurate representation of his actual intellectual abilities. Dr. Hoey was not present to explain or defend his observations and conclusions or to refute Dr. Larsen’s testimony.

Claimant notes that Dr. Larsen did not administer the tests that Dr. Hoey had administered; this was because claimant became upset and refused to continue with the evaluation. There was no showing, moreover, that Dr. Larsen’s conclusions – which were based on his interview and observation of claimant, his review of claimant’s previous evaluations, and his interviews with claimant’s mother, counselor, and probation officer – were not valid for having not administered the tests that had been administered by Dr. Hoey.

Claimant did not establish that he has disabling conditions closely related to mental retardation or that he requires treatment similar to that required for mentally retarded individuals. He has not shown that he is eligible for regional center services at this time.

## ORDER

Claimant's appeal of the service agency's denial of eligibility for services under the Lanterman Act is denied. He is not eligible for regional center services.

DATED:

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STEVEN C. OWYANG  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

This is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal the decision to a court of competent jurisdiction within 90 days of receiving notice of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)